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ELECTIONS TO FILL VACANCIES IN PRINCIPAL ORGANS: ELECTION OF A MEMBER OF THE INTERNATIONAL COURT OF JUSTICE

SECURITY COUNCIL
Fifty-first year

Memorandum by the Secretary-General

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I. INTRODUCTION

1. By a letter dated 24 October 1995, the Deputy Registrar of the International Court of Justice informed the Secretary-General of the death of Judge Andrés Aguilar Mawdsley (Venezuela) on that date and of the resulting occurrence of a vacancy in the Court. Judge Aguilar Mawdsley became a member of the Court on 6 February 1991. His term of office would have ended on 5 February 2000. According to Article 14 of the Statute of the Court, the vacancy shall be filled by the same method as that laid down for the regular election and the Secretary-General shall, within one month of the occurrence of the vacancy, issue the invitations for nominations provided for in Article 5. According to Article 5, the invitations for nominations have to be made at least three months before the date of the election which shall, pursuant to Article 14, be fixed by the Security Council.

2. By a note dated 1 November 1995 addressed to the Security Council (S/1995/914), the Secretary-General drew its attention to Article 14 of the Statute of the Court regarding fixing the date of the election to fill the vacancy in the International Court of Justice. Pursuant to Article 14 of the Statute of the Court, the Security Council decided by resolution 1018 (1995) of 7 November 1995 that the election to fill the vacancy should take place on 28 February 1996, at a meeting of the Security Council and at a meeting of the General Assembly at its fiftieth session. Pursuant to rule 15 of its rules of procedure, the General Assembly, at its 77th plenary meeting, held on 1 December 1995, decided to include in the agenda of its fiftieth session an additional item as sub-item (c) of agenda item 15 (Elections to fill vacancies in principal organs), reading as follows: "Election of a member of the International Court of Justice" (A/50/237 and A/50/PV.77).

3. Pursuant to Article 5, paragraph 1, of the Statute of the Court, the Secretary-General, in a communication dated 20 November 1995, invited the national groups of States parties to the Statute of the Court to undertake the nomination of persons in a position to accept the duties of a member of the Court. The Secretary-General further requested that nominations should be received no later than 2 February 1996. A list of the nominations (A/50/866-S/1996/52) received by that date and the curricula vitae of the candidates (A/50/867-S/1996/53) will be transmitted in separate documents to the General Assembly and the Security Council. The names of the candidates will appear on the ballot papers to be distributed during the election.

4. Article 15 of the Statute of the Court provides that a member of the Court elected to replace a member whose term of office has not expired shall hold office for the remainder of his predecessor's term. The member elected to replace Judge Andrés Aguilar Mawdsley will thus serve until 5 February 2000.

5. The present composition of the Court and the procedure in the General Assembly and the Security Council for filling the vacancy are described below.

II. COMPOSITION OF THE INTERNATIONAL COURT OF JUSTICE

6. The present composition of the International Court of Justice is as follows:

President: Mr. Mohammed Bedjaoui (Algeria)*

Vice President: Mr. Stephen M. Schwebel (United States of America)*

Judges: Shigeru Oda (Japan)***
Gilbert Guillaume (France)**
Mohammed Shahabuddeen (Guyana)*
Christopher G. Weeramantry (Sri Lanka)**
Raymond Ranjeva (Madagascar)**
Géza Herczegh (Hungary)***
Shi Jiuyong (China)***
Carl-August Fleischhauer (Germany)***
Abdul G. Koroma (Sierra Leone)***
Vladlen S. Vereshchetin (Russian Federation)*
Luigi Ferrari Bravo (Italy)*
Rosalyn Higgins (United Kingdom of Great Britain and Northern Ireland)**

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* Term of office expires on 5 February 1997.

** Term of office expires on 5 February 2000.

*** Term of office expires on 5 February 2003.

III. PROCEDURE IN THE GENERAL ASSEMBLY AND IN THE SECURITY COUNCIL

7. The election will take place in accordance with the following provisions:

(a) The Statute of the Court, in particular Articles 2 to 4, 7 to 12 and 14;

(b) Rules 150 and 151 of the rules of procedure of the General Assembly;

(c) Rules 40 and 61 of the provisional rules of procedure of the Security Council.

8. In accordance with General Assembly resolution 264 (III) of 8 October 1948, Nauru and Switzerland, which are parties to the Statute of the Court but not Members of the United Nations, have been invited to participate in the General Assembly in electing members of the Court in the same manner as the States Members of the United Nations.

9. On the date of the election, the General Assembly and the Security Council will proceed, independently of one another, to elect a member of the Court to fill the vacancy (Article 8 of the Statute).

10. According to Article 2 of the Statute, judges are to be elected, regardless of their nationality, from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law. Article 9 requires electors to bear in mind not only that the person to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured.

11. The candidate who obtains an absolute majority of votes both in the General Assembly and in the Security Council will be considered as elected (Article 10, paragraph 1, of the Statute).

12. The consistent practice of the United Nations has been to interpret the words "absolute majority" as meaning a majority of all electors. The electors in the General Assembly are all 185 Member States, together with the two non-member States mentioned in paragraph 8 above that are parties to the Statute of the Court. Accordingly, as at the date of the present memorandum, 94 votes constitutes an absolute majority in the Assembly for the purpose of the Court election.

13. In the Security Council, eight votes constitutes an absolute majority and no distinction is made between permanent and non-permanent members of the Council (Article 10, paragraph 2, of the Statute).

14. Only those candidates whose names appear on the ballot papers are eligible for election. The electors in the General Assembly and in the Security Council will indicate the candidate for whom they wish to vote by placing a cross against the name on the ballot paper. Each elector may vote for only one candidate.

15. At the 915th plenary meeting of the General Assembly, on 16 November 1960, a procedural discussion took place as to whether rule 94 (then rule 96) of the rules of procedure of the Assembly should be applied in elections to the International Court of Justice. That rule lays down a procedure for restricted ballots in the event that, after the first ballot, the requisite number of candidates have not obtained the required majority. The Assembly decided that the rule did not apply to elections to the Court and it proceeded to elect the requisite number of candidates by a series of unrestricted ballots. That decision has been followed consistently.

16. If in the first ballot in either the General Assembly or the Security Council no candidate receives an absolute majority, a second ballot will be held and balloting will continue in the same meeting until a candidate has obtained the required majority (rule 151 of the rules of procedure of the Assembly and rule 61 of the provisional rules of procedure of the Council).

17. Cases have arisen in the Security Council in which more than the required number of candidates have obtained an absolute majority on the same ballot. The practice followed by the Council has been to hold a new vote on all the candidates, and for the President of the Council to make no notification to the President of the General Assembly until only the required number of candidates, and no more, have obtained an absolute majority in the Council.

18. When a candidate has obtained the required majority in one of the organs, the President of that organ will notify the President of the other organ of the name of that candidate. Such notification is not communicated by the President of the second organ to the members until that organ has itself given a candidate the required majority of votes.

19. If, upon comparison of the name of the candidate so selected by the General Assembly and by the Security Council, it is found that the result is different, the Assembly and the Council will proceed, again independently of each other, in a second meeting and, if necessary, a third meeting, to elect one candidate by further ballots, the results again being compared after one candidate has obtained an absolute majority in each organ. If necessary, the above procedure will be repeated until the General Assembly and the Security Council have given an absolute majority of votes to the same candidate.

20. If, however, after the third meeting the vacancy still remains unfilled, the special procedure set out in Article 12 of the Statute of the Court may be resorted to at the request of either the General Assembly or the Security Council.